
HOUSE BILL No. 1202

DIGEST OF INTRODUCED BILL

Citations Affected: IC 20-6.1; IC 20-8.1-5.1; IC 34-13-3-5; IC 34-30-2-84.5; IC 35-42-4-7.

Synopsis: School students and employees. Requires a prosecuting attorney to notify the state superintendent of public instruction and the employer when a licensed school employee is convicted of certain offenses. Makes changes in the grounds for which teachers' licenses may be revoked and contracts may be canceled. Requires consultation with a teacher before action is initiated to discipline a student. Requires a governmental entity to pay a judgment, compromise, or settlement of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment. Provides civil immunity for making certain reports concerning a teacher. Changes the law concerning seduction of a child at least 16 years of age to add behaviors that constitute the offense and to expand coverage to all employees of a child's school.

Effective: July 1, 2002.

Robertson

January 10, 2002, read first time and referred to Committee on Education.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1202

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 7. (a) On the written recommendation of the state
4 superintendent, the board may revoke a license for:

- 5 (1) immorality;
- 6 (2) misconduct in office;
- 7 (3) incompetency; or
- 8 (4) willful neglect of duty.

9 However, for each revocation the board shall comply with IC 4-21.5-3.

10 **(b) This subsection applies when a prosecuting attorney knows**
11 **that a licensed employee of a school corporation or an accredited**
12 **nonpublic school has been convicted of an offense listed in**
13 **subsection (d). The prosecuting attorney shall immediately give**
14 **notice of the conviction to the following:**

- 15 **(1) The state superintendent.**
- 16 **(2) The superintendent of the school corporation that employs**
17 **the licensed employee or the equivalent authority for an**



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accredited nonpublic school.

(c) The superintendent of a school corporation or equivalent authority for an accredited nonpublic school shall immediately notify the state superintendent when the person knows that a current or former licensed employee of the school corporation or accredited nonpublic school has been convicted of an offense listed in subsection ~~(c)~~ (d).

~~(c)~~ (d) The board, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the board to have been convicted of any of the following offenses:

(1) **Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**

(2) **Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.**

(3) **Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.**

~~(2)~~ (4) **Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.**

~~(3)~~ (5) **Child molesting (IC 35-42-4-3).**

~~(4)~~ (6) **Child exploitation (IC 35-42-4-4(b)).**

~~(5)~~ (7) **Vicarious sexual gratification (IC 35-42-4-5).**

~~(6)~~ (8) **Child solicitation (IC 35-42-4-6).**

~~(7)~~ (9) **Child seduction (IC 35-42-4-7).**

~~(8)~~ (10) **Sexual misconduct with a minor (IC 35-42-4-9).**

~~(9)~~ (11) **Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.**

(12) **Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).**

(13) **Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).**

(14) **Dealing in a schedule IV controlled substance (IC 35-48-4-3).**

(15) **Dealing in a schedule V controlled substance (IC 35-48-4-4).**

(16) **Dealing in a counterfeit substance (IC 35-48-4-5).**

(17) **Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).**

~~(d)~~ (e) A license may be suspended by the state superintendent as specified in IC 20-6.1-4-13.

SECTION 2. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this



chapter ~~for~~ only **for one (1)** of the following grounds:

- (1) Immorality.
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Incompetency.
- (5) Justifiable decrease in the number of teaching positions.
- (6) A conviction for
 - (A) ~~rape (IC 35-42-4-1); if the victim is less than eighteen (18) years of age;~~
 - (B) ~~criminal deviate conduct (IC 35-42-4-2); if the victim is less than eighteen (18) years of age;~~
 - (C) ~~child molesting (IC 35-42-4-3);~~
 - (D) ~~child exploitation (IC 35-42-4-4(b));~~
 - (E) ~~vicarious sexual gratification (IC 35-42-4-5);~~
 - (F) ~~child solicitation (IC 35-42-4-6);~~
 - (G) ~~child seduction (IC 35-42-4-7);~~
 - (H) ~~sexual misconduct with a minor as a Class A or B felony (IC 35-42-4-9); or~~
 - (I) ~~incest (IC 35-46-1-3); if the victim is less than eighteen (18) years of age; or~~**an offense listed in IC 20-6.1-3-7(d).**
- (7) Other good and just cause.

When the cause of cancellation is ground (1), (2), or (6), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (7), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.

SECTION 3. IC 20-6.1-4-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10.5. (a) An indefinite contract with a semipermanent teacher may be canceled in the manner specified in section 11 of this chapter only for **one (1)** of the following grounds:

- (1) Immorality.
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Substantial inability to perform teaching duties.
- (5) Justifiable decrease in the number of teaching positions.



(6) Good and just cause.

(7) The cancellation is in the best interest of the school corporation.

(8) A conviction for

(A) ~~rape (IC 35-42-4-1)~~; if the victim is less than eighteen (18) years of age;

(B) ~~criminal deviate conduct (IC 35-42-4-2)~~; if the victim is less than eighteen (18) years of age;

(C) ~~child molesting (IC 35-42-4-3)~~;

(D) ~~child exploitation (IC 35-42-4-4(b))~~;

(E) ~~vicarious sexual gratification (IC 35-42-4-5)~~;

(F) ~~child solicitation (IC 35-42-4-6)~~;

(G) ~~child seduction (IC 35-42-4-7)~~; or

(H) ~~incest (IC 35-46-1-3)~~; if the victim is less than eighteen (18) years of age.

an offense listed in IC 20-6.1-3-7(d).

(b) An indefinite contract with a semipermanent teacher may not be canceled for political or personal reasons.

(c) Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

SECTION 4. IC 20-8.1-5.1-7.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 7.8. Before a person may initiate action to suspend or expel a student under this chapter, the person must consult the following:**

(1) A teacher, if any, who is involved in the matter giving rise to possible disciplinary action against the student.

(2) A classroom teacher of the student.

SECTION 5. IC 20-8.1-5.1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) This section applies to a person who:

(1) is a member of the administrative staff, a teacher, or other school staff member; and

(2) has students under the person's charge.

(b) A person may take disciplinary action in addition to suspension and expulsion that is necessary to ensure a safe, orderly, and effective



educational environment. **However, if the person who wishes to take disciplinary action under this section is not a teacher of the student, before the person may take disciplinary action under this section, the person must consult the following:**

(1) A teacher, if any, who is involved in the matter giving rise to possible disciplinary action against the student.

(2) A classroom teacher of the student.

(c) Disciplinary action under this section may include the following:

(1) Counseling with a student or group of students.

(2) Conferences with a parent or group of parents.

(3) Assigning additional work.

(4) Rearranging class schedules.

(5) Requiring a student to remain in school after regular school hours to do additional school work or for counseling.

(6) Restricting extracurricular activities.

(7) Removal of a student by a teacher from that teacher's class for a period not to exceed:

(A) five (5) class periods for middle, junior high, or high school students; or

(B) one (1) school day for elementary school students;

if the student is assigned regular or additional school work to complete in another school setting.

(8) Assignment by the principal of:

(A) a special course of study;

(B) an alternative educational program; or

(C) an alternative school.

(9) Assignment by the principal of the school where the recipient of the disciplinary action is enrolled of not more than one hundred twenty (120) hours of service with a nonprofit organization operating in or near the community where the school is located or where the student resides. The following apply to service assigned under this subdivision:

(A) A principal may not assign a student under this subdivision unless the student's parent or guardian approves:

(i) the nonprofit organization where the student is assigned; and

(ii) the plan described in clause (B)(i).

A student's parent or guardian may request or suggest that the principal assign the student under this subdivision.

(B) The principal shall make arrangements for the student's service with the nonprofit organization. Arrangements must include the following:

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(i) A plan for the service that the student is expected to perform.

(ii) A description of the obligations of the nonprofit organization to the student, the student's parents, and the school corporation where the student is enrolled.

(iii) Monitoring of the student's performance of service by the principal or the principal's designee.

(iv) Periodic reports from the nonprofit organization to the principal and the student's parent or guardian of the student's performance of the service.

(C) The nonprofit organization must obtain liability insurance in the amount and of the type specified by the school corporation where the student is enrolled that is sufficient to cover liabilities that may be incurred by a student who performs service under this subdivision.

(D) Assignment of service under this subdivision suspends the implementation of a student's suspension or expulsion. A student's completion of service assigned under this subdivision to the satisfaction of the principal and the nonprofit organization terminates the student's suspension or expulsion.

(10) Removal of a student from school sponsored transportation.

(11) Referral to the juvenile court having jurisdiction over the student.

(c) (d) As used in this subsection, "physical assault" means the knowing or intentional touching of another person in a rude, insolent, or angry manner. When a student physically assaults a person having authority over the student, the principal of the school where the student is enrolled shall make a referral of the student to the juvenile court having jurisdiction over the student. However, a student with disabilities (as defined in IC 20-1-6.1-7) who physically assaults a person having authority over the student is subject to procedural safeguards under 20 U.S.C. 1415.

SECTION 6. IC 34-13-3-5, AS AMENDED BY P.L.192-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an

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1 authority, or another instrumentality of a governmental entity where the
 2 member was acting within the scope of the member's employment. For
 3 the purposes of this subsection, a member of a board, a committee, a
 4 commission, an authority, or another instrumentality of a governmental
 5 entity is acting within the scope of the member's employment when the
 6 member acts as a member of the board, committee, commission,
 7 authority, or other instrumentality.

8 (b) A judgment rendered with respect to or a settlement made by a
 9 governmental entity bars an action by the claimant against an
 10 employee, including a member of a board, a committee, a commission,
 11 an authority, or another instrumentality of a governmental entity, whose
 12 conduct gave rise to the claim resulting in that judgment or settlement.
 13 A lawsuit alleging that an employee acted within the scope of the
 14 employee's employment must be exclusive to the complaint and bars an
 15 action by the claimant against the employee personally. However, if the
 16 governmental entity answers that the employee acted outside the scope
 17 of the employee's employment, the plaintiff may amend the complaint
 18 and sue the employee personally. An amendment to the complaint by
 19 the plaintiff under this subsection must be filed not later than one
 20 hundred eighty (180) days from the date the answer was filed and may
 21 be filed notwithstanding the fact that the statute of limitations has run.

22 (c) A lawsuit filed against an employee personally must allege that
 23 an act or omission of the employee that causes a loss is:

- 24 (1) criminal;
- 25 (2) clearly outside the scope of the employee's employment;
- 26 (3) malicious;
- 27 (4) willful and wanton; or
- 28 (5) calculated to benefit the employee personally.

29 The complaint must contain a reasonable factual basis supporting the
 30 allegations.

31 (d) Subject to the provisions of sections 4, 14, 15, and 16 of this
 32 chapter, the governmental entity shall pay any judgment, compromise,
 33 or settlement of a claim or suit against an employee when

34 ~~(1) the act or omission causing the loss is within the scope of the~~
 35 ~~employee's employment, regardless of whether the employee can~~
 36 ~~or cannot be held personally liable for the loss. and~~

37 ~~(2) the:~~

38 ~~(A) governor in the case of a claim or suit against a state~~
 39 ~~employee; or~~

40 ~~(B) governing body of the political subdivision, in the case of~~
 41 ~~a claim or suit against an employee of a political subdivision;~~
 42 ~~determines that paying the judgment, compromise, or settlement~~

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1 ~~is in the best interest of the governmental entity.~~

2 (e) The governmental entity shall provide counsel for and pay all
3 costs and fees incurred by or on behalf of an employee in defense of a
4 claim or suit for a loss occurring because of acts or omissions within
5 the scope of the employee's employment, regardless of whether the
6 employee can or cannot be held personally liable for the loss.

7 (f) This chapter shall not be construed as:

8 (1) a waiver of the eleventh amendment to the Constitution of the
9 United States;

10 (2) consent by the state of Indiana or its employees to be sued in
11 any federal court; or

12 (3) consent to be sued in any state court beyond the boundaries of
13 Indiana.

14 SECTION 7. IC 34-30-2-84.5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2002]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning**
17 **a person who makes a report concerning a teacher).**

18 SECTION 8. IC 35-42-4-7, AS AMENDED BY P.L.228-2001,
19 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2002]: Sec. 7. (a) As used in this section, "adoptive parent"
21 has the meaning set forth in IC 31-9-2-6.

22 (b) As used in this section, "adoptive grandparent" means the parent
23 of an adoptive parent.

24 (c) As used in this section, "child care worker" means a person who:

25 (1) provides care, supervision, or instruction to a child within the
26 scope of the person's employment in a ~~public or private school or~~
27 shelter care facility; **or**

28 (2) **is employed by a:**

29 (A) **school corporation; or**

30 (B) **nonpublic school;**

31 **attended by a child who is the victim of a crime under this**
32 **chapter.**

33 (d) As used in this section, "custodian" means any person who
34 resides with a child and is responsible for the child's welfare.

35 (e) **As used in this section, "nonpublic school" has the meaning**
36 **set forth in IC 20-10.1-1-3.**

37 (f) **As used in this section, "school corporation" has the meaning**
38 **set forth in IC 20-10.1-1-1.**

39 (g) As used in this section, "stepparent" means an individual who is
40 married to a child's custodial or noncustodial parent and is not the
41 child's adoptive parent.

42 ~~(h)~~ (h) If a person who is:

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1 (1) at least eighteen (18) years of age; and
2 (2) the:
3 (A) guardian, adoptive parent, adoptive grandparent,
4 custodian, or stepparent of; or
5 (B) child care worker for;
6 a child at least sixteen (16) years of age but less than eighteen
7 (18) years of age;
8 engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct
9 (as defined in IC 35-41-1-9), ~~with the child,~~ **or any fondling or**
10 **touching with the intent to arouse or satisfy the sexual desires of**
11 **either the child or the adult,** the person commits child seduction, a
12 Class D felony.

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